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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/527.842	03/15/2005	Steven Edward Ireland	341305-1010	1890

7590
11/08/2006
Thomas Kayden
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EXAMINER

SMITH, RICHARD A

ART UNIT	PAPER NUMBER
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2859

DATE MAILED: 11/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/527,842

Applicant(s)

IRELAND, STEVEN EDWARD

Examiner

R. Alexander Smith

Art Unit

2859

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 19 October 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

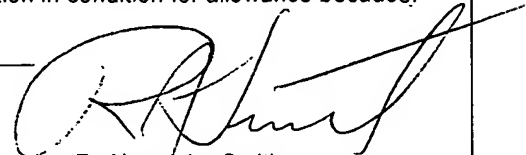
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-6.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.



R. Alexander Smith
Primary Examiner

Application/Control Number: 10/527,842

Art Unit: 2859

Continuation Sheet (PTO-303)

Continuation of 3. NOTE:

The inclusion of the limitations of cancelled claim 6 into amended claim 3 raises new issues that would require further consideration with respect to claims 4 and 5.

Continuation of 11. does NOT place the application in condition for allowance because:

In response to applicant's argument on page 6 regarding a "crowded art" and advances in the art for many decades: The contentions that the reference patents are old, that a number of years are involved, and that 103 rejections should be used sparingly are not impressive absent a showing that the art tried and failed to solve the same problem notwithstanding its presumed knowledge of the references. See *In re Wright*, 569 F.2d 1124, 193 USPQ 332 (CCPA 1977).

With respect to the argument spanning pages 6-8 regarding curved tabs on a movable member and in response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, it appears to the examiner that the knowledge would be generally available to one of ordinary skill in the art. The Applicant's argument that Hupp et al. discloses curved tabs with stationary members is noted; however, although intended to be stationary when placed they are inserted and removed and it appears to the examiner that it would be obvious to one of ordinary skill in the art at the time of the invention that they could also be slipped side to side should the tabs interfere or need to be repositioned by the reader or user.

Furthermore in the applied rejection, Hupp et al. is relied upon for the teaching that the curves can reduce stress concentration of any pulling or bending of the tongues, that the curves provide space for the pages and helps with die cutting process (as described in column 3 lines 55-68) wherein Delcour is relied upon for the sliding member. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to employ the curves, as taught by Hupp et al., to the movable member, taught by Delcour, since both address a slit to which paper is inserted and the problems addressed by the reduced stress concentration, the space for pages and the die cut process, as taught by Hupp et al., are applicable to any slit to which a flexible member(s) is inserted whether movable or not for the reasons as noted above.

The applicant should also note the cited reference US 4,901,665 to Carlin who shows a movable slit that appears to have apertures at the ends thereof (not discussed) similar to the apertures of Hupp et al. which appears to support the examiner's position.

With respect to the argument at the bottom of page 8 regarding Hupp et al. and the argument that the curves do not extend inwardly as recited in claim 3, the examiner respectfully disagrees. Hupp et al. discloses in figures 5, 7, 9 and 11 different modifications. Of these figure 9 shows a curve extending outward (as argued by Applicant) while figure 11 shows a curve extending inward (as claimed). It therefore appears to the examiner that Hupp et al. does address curves extending inwardly as claimed by Applicant.